IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3358 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURESH BHAI SHANTILAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 3358 of 1995

MR BM MANGUKIYA for Petitioner No. 1

MS PUNANI, APP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/09/2003

ORAL JUDGEMENT

#. The present petitioner - original accused against whom the complaint under Sections 323 and 504 of IPC, Section 135 of the Bombay Police Act and Section 3(11) of the Atrocities Act has been filed by respondent No.2 original complainant into Garudeshwar Police Station. The said complaint has been recorded as CR No.II 21 of 1995 on April 28, 1995.

#. On receiving the aforesaid complaint, investigation has been started and ultimately, the chargesheet has been submitted by the Investigating Authority into the court of the learned Sessions Judge, Bharuch, and, therefore, it has been numbered as Special Case No.448 of 1995. Before the charges can be framed against the present petitioner, the present petitioner filed this petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code" for short) and prays for quashing of the proceedings of Special Case No.448 of 1995 and also prays for the stay of further proceedings of the said case.

#. At the initial stage, ad-interim relief has been granted by this Court (Coram: K.R.Vyas,J) on 6.10.1995, and, thereafter, this matter could not be disposed of till date.

#. I have heard Mr.Mangukiya, learned counsel for the petitioner and Ms.Punani, learned APP for the respondent State. Learned counsel for the petitioner took me to the complaint in question - Annexure-A along with the statements of various witnesses. He also taken me to the injury certificate produced at Annexure-C to this petition. Learned counsel for the petitioner argued that, if we accept the complaint and the statements of all witnesses as it is, then also the complaint does not disclose the offence punishable under Section 3(11) of the Atrocities Act. Alternatively, learned counsel for the petitioner argued that the offence qua above referred section may be quashed.

#. Considering the facts and circumstances of the case, this Court cannot exercise its powers under Section 482 of the Code, because, this Court cannot evaluate the evidence at this stage, and, therefore, if at all the petitioner has any grievance, the petitioner is permitted to avail the remedy being provided under Section 227 of the Code wherein at the time of framing of the charge or prior to that if charge is not framed, he can pray for discharge or alternatively, the same can be decided at the time of trial. If the petitioner submits an application under Section 227 of the Code, then the same

may be decided by the Court below on merits irrespective of the fact that this petition has been filed by the petitioner and disposed of by this Court.

#. This petition stands disposed of accordingly. Rule is discharged. Ad-interim relief granted earlier stands vacated forthwith. Office is directed to send the copy of this order to the court below forthwith.

(R.P.Dholakia,J)
(pathan)